

Decision 03-06-026 June 5, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego &
Electric Company (U 902 E) for Approval of
Power Purchase Agreement with CP Kelco
U.S., Inc.

Application 02-10-030
(Filed October 21, 2002)

**OPINION APPROVING POWER PURCHASE AGREEMENT
BETWEEN SDG&E AND CP KELCO U.S., INC.**

Summary

A Power Purchase Agreement (PPA) was entered into between SDG&E and CP Kelco U.S., Inc. (Kelco) for excess energy generated at Kelco's Qualifying Facility (QF) located in SDG&E's service territory. The PPA was negotiated during the first half of 2002, after Kelco's Standard Offer No. 1 contract expired on December 31, 2001, pursuant to Decision (D.) 96-10-036. The PPA consists of a "Master Power Purchase and Sale Agreement Confirmation Letter" and a "Master Power Purchase and Sale Agreement" which, collectively, are referred to as the PPA (Appendix A).

We find that the PPA is in the public interest. SDG&E asserts that the PPA will provide Kelco a purchaser for its QF output, and at the same time honor state and federal policies encouraging the purchase of QF excess energy. Moreover, the prices in the PPA are expected to provide SDG&E ratepayers with the benefits of local generation at a savings greater than projected short run avoided costs (SRAC) of SDG&E, which is expected to exceed the PPA price. Finally, the PPA resolves all outstanding issues in the matter of Kelco's Case

(C.) 01-12-002 against SDG&E. SDG&E requests approval of the terms and conditions of the PPA and an order allowing SDG&E to recover its full costs for purchased power under the PPA, subject to SDG&E's prudent administration of the PPA. There are no protests. A public hearing is not necessary.

Discussion

A. Background

In 1998, SDG&E and Kelco executed a Uniform Standard Offer 1 (USO1) power purchase agreement for the Kelco facility. In accordance with the agreement, Kelco sold excess energy from the facility to the California Power Exchange (PX). USO1 was terminated by the Commission on December 31, 2001.

In the fall of 2001, Kelco approached SDG&E requesting a new negotiated power purchase agreement. Kelco claimed it was entitled to SRAC pricing under the Public Utility Regulatory Policies Act of 1978 (PURPA) but SDG&E disagreed. Shortly thereafter, Kelco filed C.01-12-002 against SDG&E. Because SDG&E was interested in entering into a power purchase agreement that could benefit its customers, negotiations between SDG&E and Kelco began in the first quarter of 2002. By mutual agreement of the parties and the rulings of the Assigned Administrative Law Judge (ALJ), SDG&E was granted several extensions of time to file its answer to the complaint as negotiations continued. The proposed PPA is the product of those negotiations.

The instant PPA resolves C.01-12-002. Section 5 of the Settlement Agreement and Release of Claims (Settlement) filed in that docket requires that, in order for the Settlement to take effect, the Commission must first find that the prices, terms, and conditions of the PPA, taken as a whole, are reasonable, and that SDG&E should be permitted to recover in rates its full costs for power purchased under the PPA, subject to SDG&E's prudent administration of the

PPA. By resolving the complaint through the Settlement and a PPA, the parties state that they have conserved valuable resources of themselves and the Commission, as well as honoring the public policy favoring purchase of QF power, thereby adding to the public interest that will be served by the Commission's approval of the PPA.

B. Terms and Ratepayer Benefits

SDG&E asserts that it agreed to purchase energy from Kelco under the PPA because it could do so under terms and conditions that were economically advantageous to SDG&E's ratepayers and notes that the energy purchase is subject to a price cap to manage price volatility in the event that natural gas prices rise during the PPA term.

The effective date of the PPA commences upon a "Determination Date" following Commission approval, and extends for a period of five years from the Determination Date. The terms include a fixed, non-time differentiated price for nonfirm energy and for capacity. However, the PPA price terms include an adjustment clause to account for changes in natural gas prices that could occur before the Commission approval date. This adjustment clause includes a cap on the maximum adjustment that SDG&E can be forced to accept, although SDG&E has discretion to accept a higher price. During the term of the contract, Kelco has the right to enter into sales with third parties, but the underlying PPA remains in place. All interconnection facilities are to remain in place, and the existing interconnection agreement remains in effect.

SDG&E has compared the payments to be made to Kelco under the terms of the PPA to payments made at projected SRAC energy and capacity prices. SDG&E has forecasted its SRAC energy prices based on gas market prices plus basis differentials from the NYMEX. SDG&E calculates potential energy

prices savings based on a high, expected, and low range of forecast natural gas prices, with the expected case based on the NYMEX market gas prices at Malin. In the high case, natural gas prices were increased by 10% from the expected case, and in the low case, gas prices were decreased by 10% from the expected case. The capacity payments were based on the current capacity prices of \$70.34/kW-Yr, as converted to a non-TOU¢/kWh and posted in SDG&E's Commission approved SRAC formula, and estimated annual kWh deliveries based on an average as-available capacity of 15,000 kW. The three cases yielded cost savings over the five-year term.

C. Motion for Protective Order

SDG&E is filing both a public (redacted) and confidential (unredacted) version of this application and its attachments. Attachment A to the application is the PPA, with power purchase prices, projected gas prices, and gas purchase requirements excluded from the public version. Attachment B, attached to the confidential version only, is SDG&E's economic analysis of the ratepayer benefits. By motion filed with this application, SDG&E requests leave to file the redacted material in section IV.B. of the application, the redacted material in Attachment A, and all of Attachment B under seal, and to designate that material as confidential since it contains commercially sensitive competitive information, the public disclosure of which would harm both Kelco and SDG&E in future PPA negotiations with other parties. For the reasons stated we grant the protective order. (*See* Pub. Util. Code §§ 583, 585, and General Order 66-C.)

Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the

otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceedings

Carl Wood is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. For a period of five years, the PPA prices are expected to provide SDG&E's ratepayers the benefits of local generation at a savings greater than the projected short run avoided costs of SDG&E.

2. The prices, terms, and conditions of the PPA, taken as a whole, are reasonable.

3. SDG&E should be permitted to recover in rates its full costs for power purchased under the PPA, subject to SDG&E's prudent administration of the PPA.

Conclusions of Law

1. The PPA should be approved.
2. The motion for protective order is granted.

O R D E R

IT IS ORDERED that:

1. The "Master Power Purchase and Sale Agreement Confirmation Letter" and the "Master Power Purchase and Sale Agreement" (collectively the PPA) (unredacted versions) are approved.

2. San Diego Gas & Electric Company (SDG&E) shall recover in rates its full costs for power purchased under the PPA, subject to SDG&E's prudent administration of the PPA.

3. The motion for protective order is granted for a period of two years from the effective date of this order.

4. This proceeding is closed.

This order is effective today.

Dated June 5, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

APPENDIX A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on October 4, 2002 between CP Kelco, U.S., Inc. (“Party A”) and San Diego Gas & Electric Company (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: CP Kelco, U.S., Inc.

Buyer: San Diego Gas & Electric Company

Effective Date: SDG&E’s obligation to commence performance hereunder shall not commence, if at all, until the CPUC Approval Date set forth in the Settlement Agreement (as defined below).

Product: Non-Firm.

Contract Quantity: Actual Deliveries from the Generating Facility up to Net Generating Capacity; provided however, should Seller increase its Net Generating Capacity as a result of capital additions to the Generating Facility then, subject to the terms and conditions of the Service Agreement and “Interconnection Requirements” section hereof, Buyer shall purchase under this Agreement up to, but no more than, 5 MW of such incremental increase.

Interruption: Seller may interrupt deliveries to Buyer under this Transaction at any time in its sole and unlimited discretion, except to the extent as may expressly be required under Section 10.13 of the Master Agreement. Except as expressly provided in Section 3.2 (c) of the Master Agreement, and other than in connection with any violation of Section 10.13 of the Master Agreement, Seller shall not be liable to Buyer for any such interruptions in deliveries to Buyer.

Delivery Point: High Side (12 kV) of SDG&E Sampson Street Substation

Contract Price: The Contract Price shall equal the total, all-inclusive price for the Product Buyer purchases from Seller and, when fixed according to the formula set forth in section (b) below, shall not be further adjusted for line losses.

(a) For the period commencing on the CPUC Approval Date through and including the Determination Date, the Contract Price shall be equal to the sum of the short-run avoided energy cost prices and the as-available capacity prices posted by SDG&E from time to time in accordance with the CPUC’s approved pricing methodologies, adjusted for line losses using the CPUC’s approved line loss methodology.

(b) Subject to Section (c) below, effective on the first business day following six days after the CPUC Approval Date, the Contract Price shall be fixed in accordance with the following formula:

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$$CP = PHA \times [CPB + (NPF - NPB) \times RF]$$

Where:

CP = Contract Price;

PHA = 1.174 for the On-Peak hours and 0.781 for the Off-Peak hours;

CPB = [REDACTED]¢/kWh;

NPF = the simple average of the prices for natural gas futures at the Henry Hub published by the New York Mercantile Exchange on its website after the close of trading on the Determination Date, as defined in section (d) below, in the column labeled “Last” for the 60 months immediately following the Determination Date;

NPB = [REDACTED] per MMBtu; and

RF = either (i) 1.0 if the NPF is exactly [REDACTED] per MMBtu, (ii) 0.96 if the NPF is less than [REDACTED] per MMBtu or (iii) 0.864 if the NPF is greater than [REDACTED] per MMBtu.

(c) Buyer may delay the fixing of the Contract Price as provided for in section (b) above by providing notice to Seller, in writing or by facsimile, to be received by Seller not more than four days following the CPUC Approval Date.

(i) If Buyer provides notice of such delay, Buyer may, subject to Seller’s right under section (ii) below, trigger the fixing of the Contract Price at any time prior to August 31, 2003, effective for the day following the Determination Date, by providing notice to Seller, in writing or by facsimile.

(ii) If Buyer delays the fixing of the Contract Price, Seller may, at any time prior to Buyer triggering such fixing under section (i) above and prior to August 31, 2003, trigger such fixing effective for the day following the Determination Date by providing notice, in writing or by facsimile, to Buyer; provided that: (A) Buyer and Seller shall agree upon the calculation of NPF in writing within one (1) business day of Seller’s notice; (B) if, upon such election by Seller, the NPF calculated on the Determination Date as provided for above and agreed by the parties would be greater than [REDACTED] per MMBtu then the NPF shall be set at [REDACTED] per MMBtu; and (C) if, upon such election by Seller, the NPF calculated on the Determination Date as provided for above and agreed by the parties would be less than or equal to [REDACTED] per MMBtu, then the NPF shall be set at the amount so calculated.

(iii) If Buyer delays the fixing of the Contract Price and neither Buyer nor Seller has triggered the fixing of the Contract Price by notice received before August 31, 2002, either (A) Seller shall provide notice to Buyer, in writing or by facsimile to be received on August 31, 2002, to fix the Contract Price (provided that if, upon such election by Seller, the NPF calculated on the Determination Date as provided for above would be greater than [REDACTED] per MMBtu, then the NPF shall be set at [REDACTED] per MMBtu and the CP shall equal [REDACTED] ¢/kWh) or (B) if Seller fails to provide notice under (A) above,

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Buyer shall offer to execute a contract with Seller at prices and with terms as then approved by the CPUC, if any.

(iv) If Buyer does not delay the fixing of the Contract Price under this Section (c) or if, after Buyer delays the fixing of the Contract Price, either Buyer or Seller subsequently provides notice triggering the fixing of the Contract Price under this Section (c), and, in any case, if Buyer and Seller are unable to agree upon the NPF or any other component of the Contract Price formula, whether under this Section (c) or under Section (b) above, then: (A) the Contract Price shall nevertheless be fixed at the time scheduled as if the parties had agreed; (B) payments shall continue temporarily and subject to adjustment based upon the methodology set forth in Section (a) above; and (C) the fixed Contract Price, once finally determined, shall be applied retroactively to the date upon which the Contract Price was to be fixed.

(d) The “Determination Date”, as used herein, shall be the first business day after the day that is six days following the CPUC Approval Date, if SDG&E does not delay the fixing of the Contract Price under section (c) above. If SDG&E delays the fixing of the Contract Price under section (c) above, the Determination Date is either (i) the first business day after six days following Buyer’s receipt of notice from Seller to fix the Contract Price under section (c)(ii) or (c)(iii) above, (ii) the first business day after six days following Seller’s receipt of notice from Buyer to fix the Contract Price under section (c)(i) above, as applicable, or (iii) August 31, 2003, if the Contract Price is set under (c)(iii)(B) above.

On-Peak hours: HE 0700 through 2200 Pacific Prevailing Time, Monday through Saturday excluding NERC Holidays.

Off-Peak hours: All other hours.

Other Charges: None.

CPUC Approval: Buyer shall submit this Confirmation and the Master Agreement to the CPUC for approval and authorization within fourteen (14) calendar days of execution of this Agreement.

Delivery Period: The Parties shall commence their obligation to purchase and deliver the Product pursuant to this Confirmation on the CPUC Approval Date, as set forth in the Settlement Agreement and Release of Claims, between CP Kelco and SDG&E dated _____, 2002 (“Settlement Agreement”), and, except as otherwise provided in Section (c)(iii), the term of this Transaction shall continue for a period of five (5) years after the day following the Determination Date, terminating at HE 2400 on the day following the fifth (5th) anniversary of the Determination Date. In the event the Settlement Agreement is terminated pursuant to the provisions of Section 6 therein, the Transaction contemplated by this Confirmation and the Master Agreement shall automatically terminate without further act or notice.

Purchase of Gas: Seller shall have sole responsibility for purchasing the natural gas necessary to operate the Generating Facility. Seller represents that it has committed to purchase [REDACTED] MMBtu of natural gas per month through September 2004 to operate its cogeneration facility. This quantity of natural gas represents approximately [REDACTED] % of the baseload fuel requirements of the cogeneration facility. Commencing six (6) months after

the CPUC Approval Date and annually thereafter throughout the remaining term of this Agreement, Seller shall provide Buyer with reasonable information regarding Seller's additional commitments to purchase natural gas to operate the cogeneration facility for the remaining term of this Agreement. Notwithstanding any other provision of this Confirmation and the Master Agreement, Seller shall not sell this natural gas solely for the reason that at times it may appear more economic to sell such natural gas than to operate the cogeneration facility.

Interconnection Requirements: It is the intent of the Parties that power deliveries to the SDG&E Electric System shall not at any time exceed the maximum interconnection capacity specified in Section 5 of Exhibit B of the Service Agreement (the "Interconnection Capacity"). In the event that energy deliveries exceed the Interconnection Capacity or Seller proposes to make some material change or modification to the configuration or operation of the Generation Facility, including, but not limited to an increase in the Net Generating Capacity that, in SDG&E's reasonable estimation cause Seller's deliveries to exceed the Interconnection Capacity, the Parties, at either Party's request, shall meet to determine why the Interconnection Capacity was exceeded or, if relevant, whether Seller's proposal for making a material change or modification to the configuration or operation of the Generation Facility necessitates a change to the interconnection facilities. In the event of the foregoing, SDG&E shall have the right to require that a study be conducted pursuant to the ISO Tariff and SDG&E's Transmission Owner Tariff, at Seller's expense, to determine if additional facilities, including upgrades to the SDG&E transmission and distribution systems, are required to accommodate the increased generating capacity or such change or modification, as the case may be. If SDG&E determines that additional interconnection facilities or transmission/distribution system upgrades are required, then the Parties shall execute an interconnection facilities agreement to allow SDG&E to construct and recover the costs of any such additional facilities. During any period in which SDG&E and Seller have not reached an agreement as to whether the deliveries in excess of the Interconnection Capacity due to a change or modification to the configuration or operation of the Generation Facility are permissible, Seller agrees, in the event of material adverse effects resulting therefrom, that the Generating Facility shall be operated in a manner that is consistent with Prudent Electrical Practices and is likely to ensure that energy is not delivered at any time into SDG&E's Electric System in excess of the Interconnection Capacity. SDG&E's Electric Department Rule 21 shall apply to all Transactions between SDG&E and Seller under this Confirmation. To the extent Seller engages in Alternate Sales, Seller shall accomplish those Alternate Sales in accordance with the Service Agreement.

O&M Charges: Seller shall pay Buyer monthly, the cost of ownership charge for Direct Assignment Facilities set forth in Exhibit A, Section b of the Service Agreement.

Scheduling:

(a) In the event that the Seller wishes to engage in Alternate Sales, Seller shall provide Buyer thirty (30) days prior written notice of:

- (i) Seller's intent to engage in Alternate Sales;

(ii) The date on which the Alternate Sales arrangement shall commence and terminate; and

(iii) The quantity of Product constituting the Alternate Sales.

(b) In the event Seller engages in Alternate Sales, subject to Section (d) below, Buyer shall have fourteen (14) days from the date on which Buyer receives the notice set forth above in which to notify Seller of Buyer's acceptance or rejection of Seller's request to schedule the Alternate Sale. If Buyer accepts Seller's request, then Buyer and Seller shall execute a scheduling coordination services agreement and, at Seller's direction, Buyer shall: (i) schedule Seller's energy with the third party Scheduling Coordinator designated by Seller; (ii) cooperate and participate with Seller's third party Scheduling Coordinator to conduct SC to SC transfers; and (iii) provide all required meter data to the ISO on a monthly basis, in accordance with the ISO Tariff.

(c) For each month or part thereof during which Buyer provides Seller any Scheduling Coordinator services for Alternate Sales, Seller will pay Buyer a Scheduling Coordinator fee, which shall be either: (i) a monthly amount as agreed to between Buyer and Seller at the time Seller requests such scheduling services, or (ii) such fee as the CPUC may approve from time-to-time.

(d) Seller may in its sole discretion, upon five (5) days prior written notice to Buyer, select another Scheduling Coordinator to schedule the delivery of the Product from Seller with respect to each Transaction and Alternate Sales thereafter. In the event Seller selects another Scheduling Coordinator under this Section (d), the duties and obligation of the parties under Sections 3.2 (a) – (f) of the Master Agreement shall terminate for the remaining term of this Agreement.

Adjustment of Contract Quantity.

(a) Effective on the date an Alternate Sale commences and continuing through the remainder of the Delivery Period hereunder, the Net Generating Capacity shall be reduced to account for the reduction in the Net Generating Capacity associated with such Alternate Sale; provided, however, if an Alternate Sale terminates before the expiration of the Delivery Period hereunder and Seller engages in subsequent Alternate Sales, the Net Generating Capacity shall be reduced only to the extent such subsequent Alternate Sales exceed the previous reduction in the Net Generating Capacity attributed to such terminated Alternate Sale.

(b) In the event Seller engages in an Alternate Sale in accordance with California Public Utilities Code §218(b)(2), Seller shall promptly notify Buyer of the quantity of hourly

capacity and associated energy sold as part of the Alternative Sales and when such Alternate Sale(s) shall occur.

Special Conditions: See Other Changes.

Scheduling: As set forth in Other Changes.

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ *[Insert Date on which Agreement executed]* (the “Master Agreement”) between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

CP Kelco, U.S., Inc.

San Diego Gas & Electric Company

By: _____
Name: Jurgen Dominik
Title: VP of Global Operations
Phone No: _____
Fax: _____

By: _____
Name: James P. Avery
Title: SVP Electric Transmission
Phone No: _____
Fax: _____

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name CP Kelco, U.S., Inc. ("CP Kelco" or "Seller" or "Party A")

All Notices:

Street: 2025 East Harbor Drive

City: San Diego, CA Zip: 92113

Attn: Cogeneration Manager

Phone: (619) 595-5078

Facsimile: (619) 652-5361

Duns: 001017545

Federal Tax ID Number: 51-0400757

Invoices:

CP Kelco, U.S., Inc.

2025 East Harbor Drive

San Diego, CA 92113

Attn: Cogeneration Invoices

Phone: (619) 595-5043

Facsimile: (619) 595-5978

Scheduling:

CP Kelco, U.S., Inc.

2025 East Harbor Drive

San Diego, CA 92113

Attn: Cogeneration Supervisor

Phone: (619) 595-5172

Fax: (619) 652-5361

Payments:

CP Kelco, U.S., Inc.

2025 East Harbor Drive

San Diego, CA 92113

Attn: Cogeneration Payments

Phone: (619) 595-5043

Facsimile: (619) 595-5978

Name: San Diego Gas & Electric Company
("SDG&E" or "Buyer" or "Party B")

All Notices:

Street: 8306 Century Park Court

City: San Diego, CA

Zip: 92123

Attn: Contract Administration

Phone: (858) 650-6176

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

San Diego Gas & Electric Company

8306 Century Park Ct.

San Diego, California 92123-1593

Attn: Energy Accounting Manager

Phone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

San Diego Gas & Electric Company

8306 Century Park Ct.

San Diego, California 92123-1593

Attn: Transaction Scheduling Manager

Phone: (858) 650-6160

Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company

PO Box 25110

Santa Ana, CA 92799-5110

Attn: Mail Payments

Phone: (619) 696-4521

Facsimile: (619) 696-4899

Wire Transfer:

BNK: Wachovia Bank
ABA: Routing # 053100494
ACCT: # 1869-008025
Ref Lockbox #920082

Wire Transfer:

BNK: Union Bank of California
for: San Diego Gas & Electric Company
ABA: Routing # 122 000 496
ACCT: # 4430000352
Confirmation: Sempra Energy
Credit and Collections
(619) 696-4521

Credit and Collections:

CP Kelco, U.S., Inc.
311 South Wacker Drive, Suite 3700
Chicago, IL 60606
Attn: Randy Perry
Phone: (312) 554-7844

Credit and Collections:

Sempra Energy
101 Ash Street
San Diego, CA 92101
Attn: Credit Manager
Phone: (619) 696-4521
Facsimile: (619) 696-4899

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: White & Case LLP
Jerry R. Bloom
633 Fifth Street
Los Angeles, CA 90071
Facsimile: (213) 687-0758

With additional Notices of an Event of Default or
Potential Event of Default to:

Sempra Energy
101 Ash Street
San Diego, CA 92101
Attn: Assistant General Counsel, Commercial
Law
Facsimile: (619) 696-4377

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff FERC Dated 9/10/99 and accepted 10/25/99 Docket Number 88 FERC ¶ 61,212

Article Two

Transaction Terms and
Conditions

☐ Optional provision in Section 2.4. If not checked,
inapplicable.

Article Four

Remedies for Failure
to Deliver or Receive

☐ Accelerated Payment of Damages. If not checked,
inapplicable.

Article Five

Events of Default;
Remedies

☐ Cross Default for Party A: N/A

☐ Party A: _____ Cross Default Amount \$
N/A

☐ Other Entity:_____ Cross Default Amount \$
N/A

☐ Cross Default for N/A
Party B: N/A

☐ Party B:_____ Cross Default Amount \$
N/A

☐ Other Entity:_____ Cross Default Amount \$
N/A

5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is
made.)

☐ Option B - Affiliates shall have the meaning
set forth in the Agreement unless otherwise
specified as follows:_____

☒ Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information: N/A

☐ Option A

☐ Option B Specify: _____

☐ Option C Specify: _____

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ N/A; provided,
however, that Party B's Collateral Threshold shall

be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ N/A

Party B Rounding Amount: \$ N/A

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below N/A from S&P or N/A from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:

Specify: N/A

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information: N/A

☐ Option A

☐ Option B Specify: _____

☐ Option C Specify: _____

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ N/A provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ N/A

Party A Rounding Amount: \$ N/A

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below N/A from S&P or N/A from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:
Specify: N/A

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article 10

Confidentiality	<input checked="" type="checkbox"/> Confidentiality Applicable	If not checked, inapplicable.
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Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
- ☐ Party B is a Governmental Entity or Public Power System
- ☐ Add Section 3.6. If not checked, inapplicable
- ☐ Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: See additional provisions set forth below

below.

Part 1. GENERAL TERMS AND CONDITIONS.

Article One - General Definitions.

(a) Section 1.11 shall be amended by adding the following after “Party” in third line: “after using commercially reasonable efforts to mitigate such costs.”.

(b) Section 1.12 shall be amended by deleting in the fourth line the word “issues” and replacing it with the word “issuer”.

(c) Section 1.50 shall be amended by deleting the reference to “Section 2.4” and replacing it with “Section 2.5”.

(d) Section 1.51 shall be amended by adding the words “for delivery” immediately following the word “purchases” in the second line.

(e) Section 1.51 shall be further amended by deleting in the fifth line the words “at Buyer’s option” and replacing them with the words “absent a purchase”.

(f) Section 1.53 shall be amended by deleting the words “at the Delivery Point” in the second line.

(g) Section 1.53 shall be further amended by deleting in the fifth line the words “at Seller’s option” and replacing them with the words “absent a sale”.

(h) Section 1.60 shall be amended by inserting the words “in writing” immediately following the words “agreed to”.

(i) Section 1.62. The following definition shall be added as Section 1.62: “ISO” means the California Independent System Operator, a California public benefit corporation, or its successor in interest.

(j) Section 1.63. The following definition shall be added as Section 1.63: “WECC” means the Western Electricity Coordinating Council.

(k) Section 1.64. The following definition shall be added as Section 1.64: “Prudent Electrical Practices” means, as set forth in SDG&E’s Electric Department Rule 21 those practices, methods, and equipment, as changed from

time to time, that are commonly used in prudent electrical engineering and operations to design and operate electric equipment lawfully and with safety, dependability, efficiency, and economy.

(l) Section 1.65. The following definition shall be added as Section 1.65:

“Generating Facility: means Seller's generating units, together with all protective and other associated equipment and improvements owned, maintained, and operated by Seller, which are necessary to produce the electrical power to be delivered under this Agreement, excluding associated land, land rights, and interests in land.

(m) Section 1.66. The following definition shall be added as Section 1.66:

“CPUC” means the California Public Utilities Commission or its successor in interest.

(n) Section 1.67. The following definition shall be added as Section 1.67: “Service Agreement” means the Service Agreement for Wholesale Distribution Service between NutraSweet Kelco Company and San Diego Gas and Electric Company.

(o) Section 1.68. The following definition shall be added as Section 1.68:

“SDG&E Electric System Integrity” means the state of operation of SDG&E's electric system in a manner which is deemed to minimize the risk of injury to persons and/or property and enables SDG&E to provide adequate and reliable electric service to its customers. All relays, meters, power circuit breakers, synchronizers, and other control devices as shall be agreed to by the Parties in accordance with the requirements of SDG&E as necessary for proper and safe operation of the Generating Facility in parallel with SDG&E's electric system.

(p) Section 1.69. The following definition shall be added as Section 1.69: “Seller's Protective Apparatus” means all relays, meters, power circuit breakers, synchronizers, and other control devices as shall be agreed to by the Parties in accordance with the requirements of SDG&E as necessary for proper and safe operation of the Generating Facility in parallel with SDG&E's electric system.

(q) Section 1.70. The following definition shall be added as Section 1.70: “Parties” means Party A and Party B, collectively.

(r) Section 1.72. The following definition shall be added as Section 1.72: “Net Generating Capacity” means the Generating Facility's gross generating capacity less (i) the amount required for station use (as such

requirement may change from time to time); (ii) the amount committed to supply electrical demand of (A) Affiliates, (B) International Specialty Products and (C) any transactions permitted under the California Public Utilities Code (the "PU Code") Section 218(b)(2)(up to 8760 MWh in any calendar year) (as each such requirement may change from time to time); and (iii) any amount committed to Alternate Sales (in each such case as reasonably determined by Seller).

(s) Section 1.73. The following definition shall be added as Section 1.73: "Alternate Sale" means an agreement by Seller to sell electric energy to a third party that is other than (i) an Affiliate, (ii) International Specialty Products or (iii) as otherwise permitted under the California Public Utilities Code (the "PU Code") Section 218(b)(2) (provided that such sale in (iii) does not exceed 8760 MWh in any calendar year).

(t) Section 1.74. The following definition shall be added as Section 1.74:

"ISO Tariff" means the FERC-approved and effective tariff and protocols of the ISO, as modified or superseded from time to time.

(u) Section 1.75. The following definition shall be added as Section 1.75: "SDG&E's Electric Department Rule 21" means the version of SDG&E's Electric Department Rule 21 as filed and approved by the CPUC and appended to the Confirmation.

Article Two – Transaction Terms and Conditions

(a) Section 2.2 shall be amended by adding the following paragraph at the end of the Section 2.2:

"Party A and Party B confirm that this Master Agreement shall supersede and replace all prior agreements between the parties hereto with respect to the subject matter hereof, including (on a prospective basis only) the Uniform Standard Offer No. 1 As-Available Capacity and Energy Power Purchase Agreement between San Diego Gas and Electric Company and NutraSweet Kelco Company dated as of September 23, 1998, as amended on October 4, 2001 and December 20, 2001. Party A and Party B confirm the terms of those Transactions set forth on Exhibit B attached hereto and as evidenced by the written confirmations with respect thereto, and agree that such Transactions are hereby part of, and effective as of the Effective Date, governed by this Master Agreement, and are part of the

single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2.”

(b) A new Section 2.6 shall be added as follows:

2.6 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, including in this Article Two, no Transaction or other binding commitment between the Parties shall be entered into unless such Transaction or commitment is in writing, including through electronic communication, and signed by both Parties. Neither this Agreement nor any Transaction hereunder may be amended or modified orally, including by Recording pursuant to Section 2.5.

Article Three – Obligations and Deliveries

(a) Section 3.2 shall be deleted in its entirety and replaced with the following:

3.2 Scheduling.

(a) Buyer shall act as Seller’s Scheduling Coordinator (which shall have the meaning ascribed to such term in the ISO Tariff, the (“SC”)) with respect to each Transaction and schedule the delivery of the Product from Seller to Buyer with the ISO in a commercially reasonable manner. As Seller’s SC, Buyer shall comply in all respects with this Agreement and the ISO Tariff, including, but not limited to, providing all required metering data to ISO, and Buyer shall indemnify Seller for all ISO directly related liabilities, losses, damages, costs and expenses arising out of Buyer’s failure to do so.

(b) With respect to each Transaction and to enable Buyer to schedule Product from Seller with the ISO, Seller shall schedule the delivery of Product to Buyer in advance as follows: (i) Each Business Day, no later than 9:00 a.m. Pacific Prevailing Time (“PPT”) two (2) days before the effective Schedule Date (as defined in the ISO Tariff), Seller shall provide in writing to Buyer’s designated scheduler, a forecast daily schedule (“Daily Schedule”) of Product Seller expects to deliver to the grid each hour of the Schedule Date; except that Seller shall provide a Daily Schedule for each hour of Sunday, Monday and Tuesday, no later than 9:00 a.m. PPT on Thursday of the preceding week; and (ii) Seller shall provide in writing a Daily Schedule for each hour of a holiday, no later than 9 a.m. PPT one (1) Business Day prior to the WECC pre-scheduling timeline of such holiday.

(c) Seller shall use commercially reasonable efforts to match actual hourly generation to its Daily Schedule; provided, however, Seller shall promptly notify Buyer's designated scheduler of any expected deviation from the Daily Schedule and provide Buyer's designated scheduler with an updated Daily Schedule estimating the amount of Product Seller will deliver along with an estimated time for resolution of the problem which caused deviation from the Daily Schedule. SDG&E shall attempt to mitigate the adverse impacts, if any, SDG&E may incur in the ISO Hour-Ahead Market (as defined in the ISO Tariff) as a result of Seller's deviation(s) to the Daily Schedule; provided, however, Seller shall be responsible for all uninstructed deviation penalties assessed SDG&E as a direct result of Seller's uninstructed deviation(s) under, and only to the extent Seller's uninstructed deviation(s) are beyond the tolerance band for uninstructed deviations permitted under the ISO Tariff. At Buyer's option, Buyer shall either adjust Seller's monthly billing, submit an invoice to Seller or both, for all penalties and charges assessed to Buyer by the ISO resulting from such uninstructed deviations by Seller.

(d) Notwithstanding the preceding, Buyer acknowledges that in no event shall Seller be liable to Buyer for uninstructed deviation charges or penalties other than (i) as expressly set forth in (c) above, or (ii) if such charges or penalties are the result of Buyer's (A) failure to comply with this Agreement or the ISO Tariff, or (B) negligence or willful misconduct in the scheduling of Seller's Product to the ISO.

(e) Seller shall provide all schedules to Buyer's designated scheduler by: (i) electronic mail to tsched@sdge.com or (ii) facsimile transmission at 858-650-6191. Buyer may revise the designated scheduler information via prior written notice to Seller.

(f) During the term of this Agreement, should the ISO revise the ISO Tariff and Protocols in a manner that changes any scheduling requirements applicable to a Transaction hereunder, Buyer shall provide Seller with written notice of the revision(s), the Parties shall append the new scheduling procedures to this Agreement, and the Parties shall comply with the new procedure(s) on the date they become effective.

Article 4 - Remedies For Failure to Deliver

(a) A new Section 4.3 shall be added to Article Four as follows:

4.3 **Suspension of Performance.** Notwithstanding and in addition to the remedies provided as required pursuant to Sections 4.1 and 4.2, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days during any Delivery Period, and such failure is not excused under the terms of the Product, by the other Party's failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of thirty-one (31) days or less, the performing Party may resume performance at the end of the term of such contract.

Article Five – Events of Default; Remedies

(a) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** Section 5.2 is amended to delete the following phrase from the last two lines: “under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable.”

(b) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** The following shall be added to the end of Section 5.2: “under applicable law on the Early Termination Date, then each such Transaction (individually, an ‘Excluded Transaction’ and collectively, the “Excluded Transactions”) shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.”

(c) **Net Out of Settlement Amounts.** Section 5.3 shall be amended by deleting the last sentence of such Section and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero".

(d) **Notice of Payment of Termination Payment.** Section 5.4 shall be amended by deleting from the first sentence of such Section the phrase "and whether the Termination Payment is due to or due from the Non-Defaulting Party." and replacing it with the following: ", if any."

(e) Section 5.4 shall be further amended by deleting the third sentence and replacing it with the following: "The Termination Payment, if any, shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed."

Article Six – Payment and Netting

(a) Section 6.1 shall be deleted in its entirety and replaced with the following:

6.1 **Billing Period.** The Parties agree that Buyer shall read Buyer's meter located at the Delivery Point, at the end of each monthly billing period. Buyer shall mail to Seller not later than thirty (30) calendar days after the end of each monthly billing period:

(a) a statement showing the quantity of Product delivered to Buyer during the monthly billing period, and

(b) Buyer's computation of the amount due Seller, and Buyer's check in payment of said amount.

(b) Section 6.2 shall be deleted in its entirety and replaced with the following:

6.2 **Billing Adjustment.** In the event adjustments to Buyer's payment(s) are required as a result of inaccurate meters, Buyer shall determine reasonably the correct amount of energy delivered under this Agreement during the period of inaccuracy and recompute the amount due to Seller. Any refund due and payable to Buyer resulting from inaccurate metering shall be made within thirty (30) calendar days of written notification to Seller by Buyer of the amount due. Any additional payment owed to Seller resulting from inaccurate metering shall be made the later of thirty (30) calendar days of Buyer's recomputation of the amount due from Buyer to Seller, or as part of the next regular monthly billing statement.

(c) Section 6.4 shall be deleted in its entirety and replace with the following:

6.4 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other for electric service, natural gas service or both through netting, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted therein), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. Nothing in this Section 6.4 shall limit Buyer's or Seller's rights under applicable tariff schedules.

(e) Sections 6.6, 6.7 and 6.8 shall be deleted in their entirety.

Article Ten - Miscellaneous

(a) Section 10.2 (ii) shall be amended by inserting "as of the CPUC Approval Date," before the phrase "it has all regulatory authorizations".

(b) Section 10.2 (iii) shall be amended by inserting "as of the CPUC Approval Date," before the phrase "the execution, delivery and performance".

(c) Section 10.2 (vi) shall be amended by deleting the phrase "or any of its Affiliates" immediately after the phrase "threatened against it"

(d) Section 10.5 shall be deleted in its entirety and replaced with the following:

10.5 **Assignment.** Neither Party shall assign its rights or otherwise delegate its duties or obligations under this Agreement without the other Party's

prior written consent, except in connection with the sale or merger of a substantial portion of its assets (or in the case of the Seller, the sale of the Generating Facility) to a third party that commits in writing to comply with all of the terms and conditions of this Agreement. Any assignment or delegation made without such prior written consent shall be null and void. Any consent for assignment shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of SDG&E and CP Kelco and their respective successors and assigns

(e) Section 10.6 shall be deleted and replaced with the following:

10.6 **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of California (notwithstanding otherwise applicable conflicts of law principles). The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the City of San Diego, California.

(f) Section 10.8 shall be amended by deleting the second to last sentence in its entirety and replacing it with the following sentence: “The indemnity provisions of this Agreement shall survive termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months.”

(g) Section 10.11 shall be amended by adding the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party.” Section 10.11 shall be further amended by adding the following at the end of section 10.11: “Notwithstanding the confidential nature of this Agreement, Party B may reasonably disclose confidential information to the CPUC, including, but not limited to, the Office of Ratepayer Advocates and the Energy Branch, under California Pub. Util. Code § 583 and General Order 66-C, provided, however, that Party B shall provide to Party A prior written notice of such disclosures.”

(h) A new Section 10.12 shall be added as follows:

10.12 **Dispute Resolution.**

(a) If a dispute arises between the Parties relating to the interpretation of this Agreement or to performance of any Transaction under it, the Party desiring resolution of the dispute shall notify the other Party in writing. The notice shall set forth the matter in dispute in reasonable detail and a proposed solution.

(b) The Parties shall attempt to resolve any dispute within fifteen (15) calendar days after delivery of the written notice referred to above. If the Parties fail to reach an agreement within that fifteen (15) day period, each Party shall have the right to pursue any and all remedies provided in this Agreement and as afforded by law.

(c) The existence of any dispute or controversy under this Agreement or the pendency of the dispute settlement or resolution procedures set forth herein shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Agreement.

(i) A new Section 10.13 shall be added as follows:

10.13 Scheduled Maintenance.

(a) In the event Seller is party to a participating generator agreement with the ISO and is obligated to comply with the scheduling and outage provisions of the ISO Tariff, Seller shall provide Buyer a copy of all material written communications between Seller and the ISO relating to the dates of scheduled maintenance and outages of the Generating Facility at the same time that Seller sends or receives such communications, as applicable.

(b) To the extent Seller is not a party to a participating generator agreement with the ISO or is not otherwise obligated to comply with the scheduling and outage provisions of the ISO Tariff, Seller shall comply with the following:

(i) Seller shall use commercially reasonable efforts to schedule maintenance of the Generating Facility for times other than during the peak months of the year as designated by Buyer to Seller in writing. Such peak months are currently May through September, but may be revised by Buyer upon thirty (30) days prior written notice to Seller.

(ii) By October 10 of each calendar year, Seller shall notify Buyer of the estimated scheduled maintenance for the following calendar year. This estimated schedule shall be used for informational purposes only.

(iii) Seller shall submit an outage information form (which shall include the date and time the outage is to begin, the nature of the maintenance to be performed, the date and time the outage is to be completed, and the time required to terminate the maintenance and to restore service) notifying Buyer's designated representative and transaction scheduler of a planned maintenance. Seller shall use its commercially reasonable efforts to provide Buyer such form no later than seventy-two (72) hours prior to the scheduled start date. Buyer shall promptly send Seller written acknowledgement of Buyer's receipt of the outage request form.

(iv) Seller shall coordinate and use commercially reasonable efforts to schedule maintenance at times acceptable to Buyer for scheduled maintenance; provided, however, Buyer may instruct Seller to change the date(s) of planned scheduled maintenance to the extent necessary for Buyer to preserve the operational integrity or reliability of Buyer's electrical system, so long as such delay will not potentially harm or jeopardize Seller's Generating Facility or Seller's production plant. Seller will promptly notify Buyer of any changes to its scheduled maintenance schedule.

(v) If the ISO declares a Stage 2 or Stage 3 System Emergency (as defined in the ISO Tariff and Protocols), SDG&E may dispatch Seller to operate the Generating Facility and Seller shall make all commercially reasonable efforts to comply with such request within the physical limitations of the Generating Facility; provided, however, Seller shall not be required to comply with a dispatch request to the extent that such dispatch may cause Seller to violate any state or federal laws or regulations, including, but not limited to the QF Requirements (as defined in Section 10.16 hereof).

(vi) In the event Buyer dispatches Seller in accordance with Section 10.13 (v) above, within 60 minutes of receiving a dispatch notice from Buyer, if Seller was not otherwise planning to operate, Seller shall provide Buyer with a good faith estimate of the incremental costs that Seller will incur during the dispatch period (such costs may include Generating Facility heat rate, variable O&M and fuel costs). Buyer shall notify Seller no later than 30 minutes prior to start of the dispatch period, that it agrees to pay Seller's incremental cost to operate during the dispatch period. Seller shall not be obligated to operate unless Buyer agrees to pay such incremental costs. As soon as practicable after the occurrence of a dispatch period, Seller shall provide Buyer with (A) the actual incremental cost incurred by Seller for operation of its Generating Facility during the dispatch period and (B) documentation reasonably necessary for Buyer to verify the actual incremental cost in (A).

(vii) Notwithstanding the provisions of Section 10.13(b)(i), and except as expressly provided for in Section 10.13(iv) of this Agreement, Seller may perform maintenance without restriction in the event that the Generating Facility is shut down in full or in part because of a reduction in steam or electricity requirements of Seller. In addition, except as expressly provided in Section 10.13(iv) of this Agreement, Seller shall be entitled to take one (1) outage per year for scheduled maintenance during the peak months lasting no more than 168 consecutive hours, without restrictions.

(j) A new Section 10.14 shall be added as follows:

10.14 Insurance.

(a) Seller shall maintain during the performance hereof:

(i) Commercial general liability insurance for bodily injury, personal injury, and property damage in limits, of combined single limit or equivalent for the results of any one (1) occurrence, of not less than \$1,000,000. Such insurance shall provide coverage on a

mutually acceptable commercial general liability coverage
“occurrence” form, with no coverage deletions.

(ii) Such insurance described in Section 10.14 (a) (i), above, by endorsement to the policy(ies), shall include Buyer as an additional insured, shall contain a severability of interest or cross-liability clause and shall provide that Buyer shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premiums for such insurance.

(b) Additional Insurance Provisions

(i) Evidence of coverage described above in Section 10.14 (a) shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Buyer for events arising out of the performance or non-performance of the insured Party's obligations under this Agreement.

(ii) Seller shall furnish evidence of the required certificates and endorsements to Buyer prior to commencing operation.

(iii) Seller waives its rights of recovery against Buyer for any loss or damage covered by such policy(ies) to the extent that such loss or damage is reimbursed under such policy(ies). Such insurance shall be endorsed to include a waiver of subrogation in favor of Buyer and evidence of such waiver of subrogation shall be noted on the certificates of insurance.

(iv) Seller shall provide Buyer with thirty (30) calendar days written notice prior to cancellation, termination, alteration or material change of such insurance; provided, however, ten (10) calendar days prior written notice shall be provided to Buyer prior to cancellation or termination for non-payment of premiums.

(v) Failure of Seller to comply with the above insurance terms and conditions, or the complete or partial failure of an insurance carrier to fully protect and indemnify Buyer or its affiliates, or the inadequacy of the insurance shall not in any way lessen or affect the obligation or liabilities of Seller with respect to Buyer.

(vi) All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

San Diego Gas & Electric Company

Attention: **Energy Resources & Supply Section**

8306 Century Park Court, CP-41D

San Diego, CA 92123-1593

(k) A new Section 10.15 shall be added as follows:

10.15 Interruption of Deliveries.

(a) Buyer shall not be obligated to accept or pay for and may require Seller to interrupt or reduce deliveries of Product (i) when necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or any part of its system; or (ii) if it determines that interruption or reduction is necessary because of an Emergency, forced outage, Force Majeure, or compliance with Prudent Electrical Practices; provided that Buyer shall not interrupt deliveries pursuant to this Section solely in order to take advantage, or make purchases, of less expensive energy elsewhere.

(b) Notwithstanding any other provisions of this Agreement, if at any time Buyer determines that, (i) continued parallel operation of Seller's Generating Facility may endanger SDG&E personnel, (ii) continued parallel operation of Seller's Generating Facility may endanger the SDG&E Electric System Integrity, or (iii) Seller's Protective Apparatus is not fully in service, Buyer shall have the right to disconnect the Generating Facility from SDG&E's system. The Generating Facility shall remain disconnected until such time as SDG&E is satisfied that the condition(s) referenced in this Section 10.15 (b) have been corrected.

(c) Whenever possible, Buyer shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required.

(d) Buyer shall use commercially reasonable efforts under the circumstances to coordinate with Seller to schedule the interruptions contemplated by this Section 10.15 at times acceptable to Seller.

(l) A new Section 10.16 shall be added as follows:

10.16 Qualifying Facility Status and Permits.

(a) Seller represents and warrants that as of the Effective Date and continuing until this Agreement terminates, the Generating Facility shall operate as a qualifying cogeneration facility pursuant to, and shall comply with requirements of FERC (18 Code of Federal Regulations Part 292) ("QF Requirements") and the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. Sections 796, et seq.).

(b) If at any time during the term of this Agreement, Seller becomes aware that the Generating Facility has ceased to meet the QF Requirements, Seller shall promptly provide Buyer's contract administrator with notice of such change. Upon receipt of the Seller's notice, Buyer may, by delivery of notice to Seller's contract administrator, require Seller to provide evidence that demonstrates to Buyer's reasonable satisfaction that the Generating Facility has taken corrective action to meet the QF Requirements. Seller shall provide such evidence within fifteen (15) Business Days of Buyer's notice.

(c) Buyer may periodically (not to exceed once per year) inspect the Generating Facility and/or request documentation from Seller to monitor the Generating Facility's compliance with the QF Requirements. If, at any time during this Agreement, Buyer determines that the Generating Facility may no longer meet the QF Requirements, Buyer may require Seller to provide data, within fifteen (15) Business Days of Buyer's request for such evidence, to show that the Generating Facility does meet the QF Requirements. If Seller (i) fails to provide such evidence within the time required or (ii) provides insufficient data or data which establishes that the Generating Facility does not meet the QF Requirements, then Buyer shall have the right to unilaterally file with the FERC, pursuant to the FERC's rules and regulations, for a determination of whether the Generating Facility meets the QF Requirements during the period in question. In the event FERC issues an order that the Generating Facility no longer complies with the such requirements ("FERC Order"), then the

qualifying cogeneration facility status of the Generating Facility shall be deemed ineffective for the calendar year period in question and until such time as Seller receives an order from FERC determining that the Generating Facility will operate as a qualifying cogeneration facility.

(d) Seller shall reimburse Buyer for any loss of whatever kind which Buyer incurs as a result of:

(i) Seller's failure to obtain or maintain any necessary permit or approval, including completion of required environmental studies, necessary for the construction, operation, and maintenance of the Generating Facility.

(ii) Seller's failure to comply with necessary permits and approvals or with any applicable law.

(iii) Seller's breach of that warranty in Section 10.16 (a) above.

(e) If a loss of qualifying cogeneration facility status occurs due to a change in the law governing qualifying cogeneration facility status occasioned by regulatory, legislative, or judicial action, the Seller shall compensate Buyer for any economic detriment incurred by Buyer should Seller choose not to make the changes necessary to continue its qualifying cogeneration facility status.

(m) A new Section 10.17 shall be added as follows:

10.17 Generating Facility.

(a) The Generating Facility shall be designed, constructed, operated, and maintained as follows:

(i) At Buyer's request, Seller shall provide to Buyer, Seller's electrical specifications and design drawings pertaining to Seller's Generating Facility. Seller shall provide to Buyer reasonable advance written notice of any material changes in Seller's Generating Facility and provide to Buyer specifications and design drawings of any such changes for Buyer's review and approval. Such approval shall not be unreasonably withheld or delayed. Except as expressly

provided herein, nothing contained in this Agreement shall limit Seller's ability to modify the Generating Facility.

(ii) Seller shall operate its system facilities, including its Generating Facility, on its side of the delivery point in accordance with the provisions of the applicable tariffs and the Service Agreement.

(c) Seller shall operate its system in accordance with the provisions of SDG&E's Electric Department Rule 21.

(d) Seller shall keep a daily operations log for the Generating Facility which shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the operation of the Generating Facility, including but not limited to: real and reactive power production; changes in operating status and protective apparatus operations; and any unusual conditions found during inspections.

(e) Seller shall maintain complete daily operations records applicable to the Generating Facility, including but not limited to fuel consumption, cogeneration fuel efficiency, maintenance performed, kilowatts, kilovars and kilowatt hours generated and settings or adjustments of the generator control equipment and protective devices. Such information shall be reasonably available to Buyer upon Buyer's written request.

(f) Seller shall not be required to disclose to Buyer confidential business information not otherwise required for purposes of compliance with this Agreement.

(n) A new Section 10.18 shall be added as follows:

10.18 Metering.

(a) All the meters and equipment used for measuring the power delivered to Buyer shall be located on the high side of the Interconnection Facilities transformer.

(b) In the event new or upgraded meters or equipment are required by the ISO, such new or upgraded meters and equipment shall, subject to SDG&E's approval, be used for the measurement of power for determining Buyer's payments to Seller pursuant to this Agreement.

(o) A new Section 10.19 shall be added as follows:

10.19 No Agency.

In performing their respective obligations hereunder, except to the extent provided in Section 3.2 of this Agreement, neither Party is acting, or is authorized to act, as agent of the other Party.

(p) A new Section 10.20 shall be added as follows:

10.20 Further Actions.

On and after the Effective Date, each Party shall from time to time, at the reasonable request of the other Party, take such actions, or execute and deliver (or cause to be executed and delivered) such other documents to or on behalf of the other Party.

Schedule P – Products and Related Definitions

(a) The definition of "Non-Firm" in Section 6 shall be deleted and replaced with the following:

"Non-Firm" means Seller has agreed to sell and Buyer has agreed to purchase energy from Seller's Generating Facility at the Delivery Point that is subject to interruption in accordance with the provisions of this Agreement and any applicable Confirmation.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A CP Kelco, U.S., Inc.

Party B San Diego Gas & Electric

By: _____

By: _____

Name: Jurgen Dominik

Name: James P. Avery

Title: VP of Global Operations

Title: SVP – Electric Transmission

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.